

# **EXHIBIT 1**

1 COMMONWEALTH OF MASSACHUSETTS

2 Suffolk, ss.  
3 Nos. 071882-83  
4 073128

Superior Court  
Volterra, J

5 COMMONWEALTH OF MASSACHUSETTS

6 vs.

7 SHAWN DRUMGOLD and TERRANCE TAYLOR

8 APPEARANCES:

9 Philip T. Beauchesne, Esq., Assistant District  
Attorney, on behalf of the Commonwealth.

10 Steven J. Rappaport, Esq., on behalf of the Defendant  
Shawn Drumgold.

11 Robert George, Esq., on behalf of the Defendant,  
Terrance Taylor.

12  
13  
14 Suffolk Superior Courthouse  
15 Boston, Massachusetts  
16 Thursday, March 2, 1989

17 MOTION TO DISMISS

18 VOLUME I

19 Pages 1 to 143

20 ANN M. DONNELLY  
21 OFFICIAL COURT REPORTER

22

23

24

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Gordon A. Martin, Jr.	4	15		
Leslie E. Harris	24	31		
Leslie Walker	38	45		
Richard Walsh	50	88	96	
Paul Hadley	102	107		
Paul J. Murphy	110	113		
Shawn Drumgold	121	132		

E X H I B I T S

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1 A Yes, sir.

2 Q Then you did what?

3 A Then I would have went to the Roxbury District  
4 Court, and went to the lower court District  
5 Attorney's office, and speak to the supervisor,  
6 informing them why I was there, and having him  
7 initial the complaint.

8 And I would bring the complaint down to the Clerk's  
9 office to have the warrant issued.

10 Q Okay.

11 The warrant is issued after the complaint is issued.  
12 Is that it?

13 A Well, the warrant and the complaint would be the  
14 same.

15 Q In this particular case what happened on the 29th  
16 of August?

17 A On that morning, after signing into the court, I  
18 went to the District Attorney's office, and spoke  
19 to Assistant District Attorney Canavan, and  
20 informed him that I had cleared this process  
21 through the Suffolk County District Attorney's  
22 office; and that I was there to seek an arrest  
23 warrant for murder, relative to the Tiffany Moore  
24 case, against one Shawn Drumgold.

25 He informed me at that time that Drumgold was

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1           in fact in court under another name, or he had  
2           been arrested under another name.

3       Q    Mr. Canavan was aware already at that time that  
4           Mr. Drumgold was in court? Even though he was  
5           in court under an alias, it was Mr. Drumgold  
6           that was in court?

7           Correct?

8       A    He was aware -- yes, he was aware of it.

9       Q    So that Mr. Drumgold's real identity was -- at  
10           least Mr. Canavan, the Assistant District  
11           Attorney, knew Mr. Drumgold's real identity when  
12           you arrived to speak with him that morning?

13      A    Only by looking down at a piece of paper that  
14           was on his desk.

15      Q    You came in; you said: Look, I want to get -- I  
16           need you to initial this application for a  
17           complaint in a murder case against Shawn  
18           Drumgold?

19      A    Yes, sir.

20      Q    Or words to that effect?

21      A    Yes, sir.

22      Q    And he at thatpoint said to you: Shawn Drumgold?  
23           I think Shawn Drumgold is already locked up in  
24           this building, or words to that effect?

25      A    Yes, sir.

I-55

1 Q And he looked at a piece of paper, and he had  
2 apparently seen from an alias, that is a Shawn  
3 Drumgold known alias, that you had arrested --  
4 or somebody had been arrested under a known  
5 alias?

6 A Yes, sir.

7 Q What did you do at that point? Did you go down  
8 to the Clerk's office?

9 A I would have went down and started the paper  
10 work, dropped the application off at the Clerk's  
11 office, and started that paperwork.

12 Q Is that what you did in this case?

13 A Yes, sir.

14 Q Did you in fact receive the warrant or the complaint  
15 that morning?

16 A Yes, sir.

17 Q And is it fair to say that you received that  
18 warrant or complaint had issued on Mr. Drumgold  
19 charging him with murder -- I believe that was  
20 Warrant No. 8486?

21 A Yes, sir.

22 Q And that had occurred by sometime around 10:00 a.m.  
23 Correct?

24 A I'm not exactly sure of the time. Somewhere around  
25 10:00 a.m. about.

1 Q That's a fair approximation?

2 A Somewhere around that time. Yes, sir.

3 Q And, sir, were you present for the conversation  
4 that occurred between -- by the way, did you  
5 request of Mr. Canavan or anybody else an oppor-  
6 tunity to do further identification procedures  
7 of Mr. Drumgold?

8 A The only -- I informed him that I was going to be  
9 in the courtroom when they called Mr. Drumgold's  
10 first case, the first call of the list. I was in  
11 the courtroom then, and I physically wanted to  
12 observe him.

13 Q Now, you observed him. Was an attorney not appointed  
14 for him at that time?

15 A I believe -- that's when they first called the list --  
16 there was not an attorney appointed. One would  
17 have been appointed for him at that time.

18 Q That particular time -- I mean, you've been in court  
19 hundreds, if not thousands of times. Correct?

20 A Yes, sir.

21 Q And that's the standard procedure, is it not?

22 A Yes, sir.

23 Q Now, after that first case was called, and you  
24 had an opportunity to observe Mr. Drumgold -- well,  
25 as of that time you had already applied for the

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1                   complaint?

2       A   Yes, sir.

3       Q   Had you already received the complaint?

4       A   I'm not sure if I had physically picked it up from  
5                   the Clerk's office.

6       Q   But you had picked up the complaint some time around  
7                   10:00 -- approximately 10:00?

8       A   Yes, sir.

9       Q   Were you present in the courtroom -- well, let  
10                  me ask you this.

11                  Did you request of either the Court, or the DA,  
12                  or anybody in the courthouse that day -- did you  
13                  request custody of Mr. Drumgold so you could do  
14                  further identification procedures?

15       A   I requested custody of him so I could speak to  
16                  him.

17       Q   You requested -- who did you make that request to?

18       A   To one of the court officers.

19       Q   One of the court officers?

20       A   Yes, sir.

21       Q   You didn't speak to Mr. Canavan about that?

22       A   I may have told Mr. Canavan that I was going to  
23                  attempt to talk to him.

24       Q   Did you make any attempt to find out who his  
25                  lawyer was at that particular time?

I-58

1 A No, sir.

2 Q You say he had already been brought into the court-  
3 room for the first call. Correct?

4 A Yes, sir.

5 Q And based upon your experience you knew that counsel  
6 is -- at least in your experience --- appointed for  
7 Defendants at the first call of the list, when  
8 they're brought into court.

9 Correct?

10 A Yes, sir. For the case that he was being arraigned  
11 on. Yes, sir.

12 Q But you -- that's right.

13 You knew that counsel had been at least appointed  
14 on that, or assumed that counsel had been appointed  
15 on that?

16 A I would have assumed that counsel would have been  
17 appointed for him on that.

18 Q Now, were you present in the courtroom during the  
19 discussion between Mr. Celester and Judge Martin?

20 A No, sir.

21 Q Were you aware of any discussion between Judge  
22 Martin and Deputy Celester?

23 A I was aware that Deputy Celester was in the build-  
24 ing, and that we were going to request -- we were  
25 requesting him to be rebooked at Area B, and have --

1           to continue the booking process.

2       Q    What was the purpose of having him rebooked?

3       A    Seeing this was a felony case, a major felony case,  
4           different photographs are taken -- standup photo-  
5           graphs. It's not just a standard type photograph  
6           of a mug shot. There's other photographs that are  
7           added. They're standup, full length photographs,  
8           left and right.

9       Q    So that was the purpose of wanting to have him  
10          rebooked, so that you could take further photo-  
11          graphs of him?

12      A    Yes, sir.

13      Q    You already had his fingerprints. Correct?

14      A    Yes, sir. They already had his fingerprints. I  
15          don't know if they took felony fingerprints of  
16          the Defendant or not. Sometimes they take major  
17          fingerprints -- major case prints.

18      Q    I don't understand, sir. Perhaps you could just  
19          explain. When you say major case prints, aren't  
20          -- when you take a person's fingerprints don't  
21          you take prints of each finger?

22      A    Some agencies -- I'm not sure if our own agency  
23          takes a major case print, which would be a whole  
24          palm print.

25      Q    Let me ask you this, sir?

I-60

1           In your investigation of this case that led up  
2           to gathering what you believed was enough  
3           evidence to secure a complaint in a murder case,  
4           hadn't you checked through your identification  
5           bureau or various procedures to see whether or  
6           not you had these prints?

7           A I'm sure that I -- we had a copy of his----

8           Q You checked to see if you had his prints?

9           A Yes, sir.

10          Q And were they major prints or not major prints?

11          A The only thing I would have seen or obtained would  
12           have been an eight by eight, which we call an  
13           eight by eight record card of the Defendant. And  
14           it would only have two fingerprints on it. And I  
15           don't obtain the whole set of fingerprints.

16          Q I understand.

17           So you're saying as of this time you're seeking the  
18           murder complaint you personally had not secured  
19           the whole set of prints?

20          A No, sir.

21          Q But they may have been on record in the Boston  
22           Police Department identification bureau, none-  
23           theless.

24           Correct?

25          A I would believe they would be on file.

I-61

1 Q And you had this belief at that time. Correct?

2 A Yes, sir.

3 Q So it's fair to say that the reason -- the further  
4 identification procedures that you felt were  
5 necessary as of the 29th of August were full photo-  
6 graphs as opposed to just mug shots?

7 A Yes, sir.

8 Q Now, you worked pretty closely on this case with  
9 Detective Murphy?

10 A Yes, sir.

11 Q And do you and Detective Murphy often work together  
12 as a team on cases?

13 A Yes, sir.

14 Q Do you know if Detective Murphy was in the building  
15 that day?

16 A At----

17 Q At the Roxbury Court that day?

18 A At some point in time Detective Murphy arrived at  
19 Roxbury Court. Yes, sir.

20 Q Do you know if he was in the courthouse when  
21 Detective Celester was there?

22 A Yes, sir.

23 Q Do you know if he was in the courtroom with Detective  
24 Celester?

25 A I don't know that, sir.

I-62

1 Q Well, let me ask you this.

2 At a certain point during the course of that day  
3 you actually took Mr. Drumgold into custody.

4 Correct?

5 A Yes, sir.

6 Q And you brought him over to Area B. Correct?

7 A Yes, sir.

8 Q As of that point in time -- at that point in time  
9 did you know whether or not Murphy had been in  
10 the courtroom with Celester?

11 A I wasn't physically in the courtroom. I know that  
12 they were in the courtroom. Yes, sir.

13 Q So you weren't there, but to the best of your know-  
14 ledge, at the time that you took Mr. Drumgold  
15 physically into custy and brought him over to  
16 Area B, you were apprised of the fact that Detective  
17 Murphy had been in the courtroom with Detective  
18 Celester?

19 A It was -- I was under the impression that at some  
20 point in time Detective Murphy had been ben in  
21 the courtroom.

22 Yes, sir.

23 Q I'm asking: Was it your impression that he had been  
24 there with Detective Celester?

25 A I can't say that. I don't know that. I know they

I-63

1                   were both in -- probably both in the courtroom.

2       Q   Let me ask you this, sir.

3                   Did you have any discussions -- approximately what  
4                   time did you take physical custody of Mr. Drumgold?

5       A   It would have to be in the afternoon. I'm not  
6                   exactly quite sure of the physical time. Possibly  
7                   some time after 1:00 o'clock.

8       Q   Okay.

9                   Well, was it right around the time that he was  
10                  rebooked?

11      A   Yes, sir.

12      Q   Let me show you this document, sir, which purports  
13                  to be a booking sheet (showing document to witness),  
14                  dated August 29, 1988.

15                  And take a look at the time listed up there on the  
16                  right-hand corner. Would that refresh your recollec-  
17                  tion as to the approximate time that you took Mr.  
18                  Drumgold into custody?

19      A   We would have took him a couple of minutes before  
20                  that, walked him through the building, upstairs to  
21                  the second floor -- approximately five or ten  
22                  minutes prior to this.

23      Q   So would it be fair to say that it was approximately  
24                  1:00 p.m. that you took physical custody of Mr.  
25                  Drumgold?

I-64

1 A Yes, sir.

2 Q However, sir, it is also fair to say you had served  
3 him with the warrant prior theretc?

4 Or, did you not serve him with the warrant?

5 A (No response.)

6 Q In other words, do you remember what time you served  
7 him with the warrant?

8 A Physically served him with the warrant?

9 Q Yes?

10 A I don't believe I ever physically served him with  
11 the warrant. I spoke to him relative to my inten-  
12 tions of the warrant. The warrant hadn't been  
13 issued yet. At some point in time it would have  
14 caught up to his court papers.

15 Q Sir, I want you to take a look at this Boston Police  
16 incident report (showing document to witness) with  
17 a date of occurrence 8/19/88?

18 A (Pause.)

19 Q Sir, just take a look at this document, if you  
20 would, and read it over to yourself?

21 A (Pause.)

22 Yes, sir.

23 Q Sir, is it fair to say that this document I just  
24 showed you is a Boston Police incident report  
25 which describes the arrest of Shawn Drumgold on

I-65

1                   August 29, 1988?

2       A    I wouldn't say that it describes the arrest. No,  
3                   sir.

4       Q    Okay.

5                   You have written on this report -- type of incident  
6                   -- correct? Or typed -- this is your report, is  
7                   it not?

8       A    Yes, sir.

9                   MR. RAPPAPORT: May this be marked for  
10                  identification?

11                  MR. BEAUCHESNE: No objection.

12                  THE COURT: Do you want to make it an  
13                  exhibit?

14                  MR. RAPPAPORT: Yes, I would like to make  
15                  it an exhibit.

16                  THE COURT: Any objection to making it an  
17                  exhibit?

18                  MR. BEAUCHESNE: No objection, your Honor.

19                  THE COURT: It may be marked.

20                  (Document was marked Exhibit  
21                  No. 2, and was received in  
22                  evidence.)

23                  THE COURT: That's a l-l report? Is that  
24                  what it is?

25                  THE WITNESS: Yes, sir. There should be

I-66

1 a Supplementary Report to an initial incident report.

2 BY MR. RAPPAPORT:

3 Q Now, sir, viewing this report, there is a particular  
4 space for the type of incident, is there not?

5 A Yes, sir.

6 Q Do you have a copy of this report with you, by  
7 the way?

8 A I don't have a copy of that specific report. No,  
9 sir.

10 Q And on this particular report, sir, you typed in:  
11 Homicide; and then, in parentheses, thereafter:  
12 Arrest.

13 Is that not correct?

14 A Yes, sir.

15 Q And thereafter you wrote the time of the occurrence.  
16 Correct? Or there's a space for the time of the  
17 occurrence, is there not (showing document to  
18 witness)?

19 A Yes, sir.

20 Q And the time of the occurrence relating to the  
21 arrest on the homicide -- it says 10:00 a.m., does  
22 it not?

23 A Ye, sir.

24 Q And, sir, this relates, does it not, to the arrest  
25 of Shawn Drumgold on August 29, 1988?

I-67

1 A That incident report does relate to that. Yes,  
2 sir.

3 Q And you wrote this incident report out, did you  
4 not?

5 A Yes, sir.

6 Q And did you you not state -- at least type out at  
7 the bottom of the report -- that at about 10:00  
8 a.m. this date -- referring to 8/29/88 --  
9 Detectives Paul Murphy and Richard Walsh of the  
10 Homicide Unit arrested No. 25 -- which refers to  
11 Shawn Drumgold at Roxbury District Court on  
12 Warrant No. 8802CR8486, issued by Roxbury  
13 District Court for the murder of Tiffany Moore,  
14 which took place on August 19, 1988, at 9:24 p.m.  
15 at Homestead Street and Humboldt Ave. He was  
16 taken to Area B, where he was advised of his rights  
17 and booked.

18 Is that not what you put on this report?

19 A Yes, sir. That's what I put in the report.

20 Q Now, after you got to Area B you not only advised  
21 him of his rights, sir, you in fact showed him or  
22 explained to him an interrogation advice of rights  
23 form, did you not?

24 A Yes, sir.

25 Q And I show you this form, sir (showing document to

I-68

1                   witness), and I ask you whether or not you recognize  
2                   that?

3                   A Yes, I do.

4                   Q And, sir, was that not the advice of rights form  
5                   which you presented to Mr. Drumgold some time  
6                   between 1:15 p.m. and 1:30 p.m. on August 29,  
7                   1988?

8                   A Yes, sir.

9                   Q And you had him read that. Correct?

10                  A Yes, sir.

11                  Q And he signed it. Correct?

12                  A Yes, sir.

13                   MR. RAPPAPORT: Your Honor, may this be  
14                   marked, please?

15                   MR. BEAUCHESNE: No objection.

16                   THE COURT: Exhibit No. 3.

17                   (Document was marked Exhibit  
18                   No. 3, and was received in  
19                   evidence.)

20                   THE COURT: That was at 1:15, was it?

21                   MR. RAPPAPORT: Some time between  
22                   1:15 and 1:30.

23                   THE COURT: We'll take a short recess at  
24                   this time.

25                   (Brief recess taken.)

I-69

1                   MR. RAPPAPORT: Your Honor, with the  
2 Court's permission, Mr. Drumgold is trying to do some  
3 reading and writing. Would it be possible to take his  
4 cuffs off?

5                   THE COURT: I'll talk to the court  
6 officers.

7                   (Bench conference off the record.)

8                   BY MR. RAPPAPORT:

9                   Q     The booking report that you had reviewed before  
10                  showed that Mr. Drumgold was rebooked at  
11                  1:15.

12                  Correct?

13                  A     No, sir. Our booking sheet -- yes, sir. That  
14                  would have been 1:15. Yes, sir.

15                  Q     And it was some time shortly thereafter that Mr.  
16                  Drumgold signed that particular rights form.

17                  Correct?

18                  A     Yes, sir.

19                  Q     Is it fair to say, sir, that you conducted an  
20                  interview of Mr. Drumgold some time around 1:30  
21                  on August 29, 1988?

22                  A     Yes, sir.

23                  Q     And that interview was conducted at the same time  
24                  or immediately after he had signed that rights  
25                  form.

I-70

1 || Correct?

2 A Yes, sir.

3 Q And, sir, I show you -- I want you to take a look  
4 at this document (showing document to witness),  
5 if you would, and tell me if you recognize that  
6 document?

7 A Yes, I do.

Q And what do you recognize that document to be?

9 A This would have been a typed-up version of a  
10 taped statement that we took at Area B, on the  
11 second floor.

12 Q Now, in addition to that typed-up statement you made  
13 a tape recording, did you not?

14 A Yes, sir.

Q And you made certain copies of that tape recording?

16 A I myself, no, sir.

17 Q Do you know if another officer working on your team  
18 in this investigation made up other copies of  
19 that?

20 A I'm not sure if he made up other copies. He may  
21 have.

22 THE COURT: In other words, through  
23 discovery you got a tape.

24 Right?

25 MR. RAPPAPORT: That's correct.

I-71

1                   THE COURT: Do you agree that it's  
2                   authentic?

3                   MR. BEAUCHESNE: Well, I haven't listened  
4                   to the one that he wants to offer, but if he represents  
5                   to me that it's the same one that I gave him, I'll accept  
6                   his representation.

7                   MR. RAPPAPORT: It's the one I got.

8                   THE COURT: It's what?

9                   MR. RAPPAPORT: It's Copy Number 5, the  
10                  one that I received.

11                  THE COURT: That's the one that you  
12                  received pursuant to discovery.

13                  Right?

14                  MR. RAPPAPORT: That's correct.

15                  MR. BEAUCHESNE: And it hasn't been changed  
16                  since he got it. Is that the representation?

17                  MR. RAPPAPORT: It hasn't been changed  
18                  since I got it. I listened to it, Judge, and it  
19                  sounded like----

20                  THE COURT: He doesn't look like Rosemary  
21                  Woods to me.

22                  MR. BEAUCHESNE: No, he doesn't to me,  
23                  either, your Honor; but I just like to have these things  
24                  on the record.

25                  THE COURT: Do you want to mark it? Is

I-72

1           that the idea?

2           MR. RAPPAPORT: I tell you what, Judge.  
3           First I'd like to have the----

4           THE COURT: Any objection to the transcrip-  
5           tion?

6           MR. BEAUCHESNE: No, your Honor. There  
7           isn't.

8           THE COURT: Exhibit No. 4.

9           (Document was marked Exhibit  
10          No. 4, and was received in  
11          evidence.)

12          MR. RAPPAPORT: Your Honor, I'll listen  
13          to this again, before I have it marked.

14          THE COURT: Okay.

15          BY MR. RAPPAPORT:

16          Q       Now, sir, to the best of your knowledge is there  
17          any other rights form that was signed by Mr.  
18          Drumgold at any other time on August 29, 1988,  
19          other than the one that was just marked?

20          A       I believe he would have signed the booking sheet,  
21          which also has a brief statement of his rights.

22          Q       And that would have been at approximately 1:15.  
23          Correct?

24          A       Yes, sir.

25          Q       But as far as a specific form, interrogation form

I-73

1           or anything of that nature, there's no other  
2           document that you're aware of, other than the copy  
3           I had shown you and had marked?

4       A    Other than him verbally having the rights----

5       Q    Sir, my question to you right now is: Is there  
6           any other rights form in existence, other than  
7           the one that I just had marked, that you're  
8           aware of?

9       A    Yes, sir.

10      Q    There is another rights form?

11      A    The beginning of the tape recording conversations.

12      Q    While you began the tape recording you showed Mr.  
13           Drumgold that particular rights form. Correct?

14      A    Yes, sir.

15      Q    And you had him read that. Correct?

16      A    Yes, sir.

17      Q    And perhaps it was read to him as well. Correct?

18      A    Yes, sir.

19      Q    And you then asked him if he would sign that form.  
20           Correct?

21      A    Yes, sir.

22      Q    And that all comes out in the interview, does it  
23           not?

24      A    Yes, sir.

25      Q    What I'm saying is you had him sign a waiver of

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1 rights form of sorts.

2 Correct?

3 A Yes, sir.

4 Q And other than that waiver of rights form, which  
5 he executed at the beginning of his statement to  
6 you at approximately 1:30 on August 29, 1988, is  
7 there any other waiver of rights form that was  
8 executed by Mr. Drumgold, that you're aware  
9 of?

10 A No other written waiver of rights form. No,  
11 sir.

12 Q Okay.

13 Other than that tape recording of Mr. Drumgold  
14 at 1:30, is there another taped waiver of rights?

15 A No, sir.

16 Q Do you have any document, tape, any physical item  
17 which memorializes a waiver of rights by Mr.  
18 Drumgold at any time other than at approximately  
19 1:30 on August 29, 1988?

20 A I am not sure. I'm trying to see if I had written  
21 another report prior to that.

22 Q But as far as you know right now you have  
23 nothing else?

24 A No, sir.

25 Q There is no other taped statement certainly?

1 A No, sir.

2 Q There's no other written statement?

3 A I'm not sure, sir.

4 Q You're saying that somewhere there may be a written  
5 statement by Mr. Drumgold, other than the statement  
6 he gave at 1:30?

7 A I may have done another report, sir. I'm not sure.

8 Q Sir, I'm asking you: First, is there any statement  
9 -- written statement by Mr. Drumgold any time other  
10 than approximately 1:30 on August 29th?

11 A Written?

12 Q Written?

13 A No, sir.

14 Q And you're saying now that -- I assume, sir, you're  
15 saying that you spoke to Mr. Drumgold some time  
16 prior to 1:30?

17 A Yes, sir.

18 Q Which he was still at the Roxbury District Court?

19 A Yes, sir.

20 Q And that you questioned him at that time?

21 A I had a brief conversation with him. Yes, sir.

22 Q You had a brief conversation with him at that time  
23 concerning the events of August 19th, or at least  
24 events pertaining to him, on August 19th, 1988?

25 A It would have been -- the conversation I would have

1       had would have been why I was appearing in the court,  
2       informing him that I was in the court seeking a  
3       complaint against him.

4       Q     Okay.

5       But other than informing him of that, are there  
6       any other statements that you're aware of that  
7       we haven't discussed yet, meaning a statement  
8       informing him at that time, some time, that you  
9       were going to seek a complaint against him; and  
10      a statement that he gave you in response to  
11      questions at 1:30? Any other statements that you're  
12      aware of?

13      A     I have not found any other statements. No, sir.

14      Q     Well, let me ask you this.

15      Have you given Mr. Beauchesne any other statements,  
16      or any other District Attorney any statements,  
17      other than -- well, first of all, let me ask you  
18      this.

19      There are no other written statements, are there?

20      A     I am not sure if there is not any other written  
21      statements.

22      Q     Well, sir, while you -- during the break did you  
23      manage to get a copy of the Supplemental Arrest  
24      Report, which has been marked Exhibit 2?

25      A     I believe I already have that.

I-77

1 Q You do have a copy of this available, sir (indi-  
2 cating)?

3 A That, no. I don't have that, either. I don't  
4 have that. No, sir.

5 Q Sir, do you have an earlier report in which you  
6 described advising Mr. Drumgold of certain  
7 rights?

8 A I don't have that here. No, sir.

9 Q Well, sir, you're saying you don't have it, but  
10 there is one that exists; you actually have a  
11 report that you had produced?

12 When I say produced, that you had written or  
13 typed, and signed, which indicates that at some  
14 time prior to 1:00 o'clock on August 29, 1988  
15 you had advised Mr. Drumgold of his rights?

16 MR. BEAUCHESNE: If I might, your Honor,  
17 in an attempt to expedite the matter.

18 I think I read such a report. And we're  
19 looking for it now in a very voluminous folder that the  
20 detectives left with me last week.

21 MR. RAPPAPORT: Well, I will state for  
22 the record, your Honor, that I have received no such  
23 report.

24 MR. BEAUCHESNE: I don't believe I sent him  
25 such a report. I think that's perhaps the first I saw of

I-78

1 it, and I wasn't aware I hadn't sent it. If we find it,  
2 he'll get it immediately.

3 BY MR. RAPPAPORT:

4 Q You may have prepared a report in which you  
5 indicated that you read Mr. Drumgold his rights  
6 some time during the morning of August 29th?

7 A I may have. Yes, sir.

8 Q Okay.

9 And did you tell any brother officers about this  
10 encounter with Mr. Drumgold when you may have  
11 read him his rights?

12 A I was in the presence of another officer at that  
13 time.

14 Q And who was that other officer?

15 A Detective Murphy.

16 Q Do you know if Detective Celester -- excuse me,  
17 Deputy Celester -- was ever apprised, when he  
18 appeared in court on the 29th of August, that  
19 you had spoken to Mr. Drumgold earlier and  
20 read him his rights?

21 A I'm not aware of that. No, sir.

22 Q When did you first tell that to Mr. Beauchesne?

23 A Tell what, sir?

24 Q Well, that you had met with Mr. Drumgold at an earlier  
25 time, some time during the morning of August 29th,

1                   and that you had read Mr. Drumgold his rights?

2       A   Some time within the first -- previous few weeks  
3                   to this day I've had conversation of what  
4                   happened that day with Mr. Beauchesne.

5       Q   You have nothing to memorialize that, though,  
6                   certainly -- you didn't have Mr. Drumgold execute  
7                   any waiver, did you?

8       A   At the first time, no, sir.

9       Q   And you didn't tape him agreeing to talk to you,  
10                  or you didn't tape your reading of his rights to  
11                  him?

12      A   No, sir.

13      Q   What rights did you relate when you first saw him?

14                   THE COURT: This would be in the morning.

15                   MR. RAPPAPORT: Judge, I don't know.

16                   THE WITNESS: It would have been in the  
17                  morning.

18                   BY MR. RAPPAPORT:

19      Q   Well, sir, at approximately what time did you first  
20                  advise Mr. Drumgold of his rights?

21      A   It would have been right after they first called  
22                  Mr. Drumgold's case.

23      Q   Right after you saw him appear in court and have  
24                  an attorney appointed on the other case?

25      A   Yes, sir. He was brought back into the docket and ..

I-80

1 I asked the court officer if I could go into the  
2 docket and speak to him.

3 Q And you proceeded into the dock to speak to him?

4 A Yes.

5 Q And you say that at that time you advised him of  
6 his rights?

7 A I informed him, as the paper work was probably  
8 not caught up to him at that point in time, that  
9 -- why I was there; that I was there, and I was  
10 seeking a warrant that would eventually catch  
11 up to him during the day, charging him with  
12 murder.

13 And then I would have verbally gave him his rights.

14 Q What did you say to him?

15 A I informed him that I was in the court to seek a  
16 complaint for murder against him, relative to the  
17 Tiffany Moore incidents.

18 Q Which rights did you tell him?

19 A I gave him his Miranda rights.

20 Q Could you repeat those, please?

21 A I would have read them from the card.

22 Q Do you have the card with you?

23 A Yes, I do.

24 Q And it's your memory that you specifically ready  
25 the Miranda rights from a card to him at that

1 time?

2 A Yes, sir.

3 Q Did you ask him to initial that card, or sign  
4 that card?

5 A It's a plastic card, sir. I wouldn't have asked  
6 him that.

7 Q Well, did you have a pad and a piece of paper with  
8 you at that time?

9 A I don't now if I had anything in my -- any paper  
10 work on me, no, sir.

11 Q So, at that time, when you say that you read him  
12 his rights, you did not have him memorialize that  
13 in any way?

14 A No, sir.

15 Q And you may or may not have written a report  
16 concerning that?

17 A Yes, sir.

18 Q You're not sure?

19 A No, sir. I'm not sure.

20 Q And how long did that discussion occur -- go on  
21 for?

22 A It was a very brief discussion, probably ten minutes.  
23 Maybe less.

24 Q As little as two minutes?

25 A Longer.

I-82

1 Q Five minutes?

2 A Five to ten minutes. We weren't in there that  
3 long. I don't believe we were in there that long  
4 with him.

5 Q Now, at some point later in the day you prepared  
6 this report, which has been marked as Exhibit 2.  
7 Correct?

8 A That's the supplementary, sir?

9 Q The supplementary report -- that was prepared,  
10 was it not, some time on -- well, the report's  
11 dated, is it not, August 29, 1988?

12 A This would have coincided -- this report would have  
13 went along with a booking process. Yes, sir. There  
14 would have been a booking sheet and this sheet  
15 made out approximately the same time.

16 Q And is this the booking sheet that you referred  
17 to, sir (showing document to witness)?

18 A Yes, sir.

19 Q Okay.

20 This booking sheet----

21 MR. RAPPAPORT: Your Honor, may the booking  
22 sheet be marked?

23 THE COURT: Do you have any objection,  
24 Mr. Beauchesne?

25 MR. BEAUCHESNE: No, your Honor.

I-83

1 THE COURT: All right.

2 It may be marked Exhibit No. 5.  
3 (Document was marked Exhibit  
4 No. 5, and was received in  
5 evidence.)

6 THE COURT: We're going to have to take  
7 -- I think we should put him back into custody. We're  
8 going to recess until 2:00 o'clock, because I have  
9 another matter.

10 (Court recessed.)

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I-84

1 AFTERNOON SESSION

2 MR. RAPPAPORT: May I proceed, your  
3 Honor?

THE COURT: Certainly.

**RICHARD. WALSH, Resumed**

Direct Examination, Continued

BY MR. RAPPAPORT:

Q Mr. Walsh, when you had your first conversation  
with Mr. Drumgold at approximately 10:00 o'clock  
that morning, you didn't know at that time,  
did you, that you were going to get custody of  
him at some point, did you?

13 A At some point in time I knew we would possibly  
14 be doing another booking. Usually we do another  
15 booking for the new charge that we take out for.

16 Q So at that time you believed that you would  
17 eventually receive custody of Mr. Drumgold?

A Yes, sir.

Q The supplemental police report and booking sheet  
that described your activities vis a vis Mr.  
Drumgold on August 29, 1988 -- is there any  
indication at all on either of those documents  
that you had had a discussion with Mr.  
Drumgold earlier in the day?

25 A No. sir -

I-85

1 Q And is there any contemporaneous report -- when  
2 I say contemporaneous report, is there any  
3 report that you produced on August 29, 1988  
4 which shows or states that you had discussions  
5 with Mr. Drumgold earlier in the day?

6 A No, sir.

7 Q There's no reference to that in the taped state-  
8 ment, is there?

9 A No, sir.

10 Q In fact, sir, you had mentioned before that there  
11 was some document, you believed there was some  
12 document which existed which spoke of a discus-  
13 sion you had with Mr. Drumgold during the  
14 morning of August 29th.

15 Correct?

16 A It was brought to my attention that a document  
17 may exist. Yes, sir.

18 Q Sir, you sought a search warrant for 27 Olney Street  
19 in Dorchester on August 31, 1988?

20 A Yes, sir.

21 Q And you submitted an affidavit, did you not, in  
22 support of that search warrant?

23 A Yes, sir.

24 Q And, again, you submitted that affidavit on August  
25 31st, 1988. Correct?

I-86

1 A I'm not exactly sure of the date. It would be  
2 right around there. Yes, sir.

3 Q Well, let me show you this document; and take a  
4 look, and see whether or not this refreshes your  
5 recollection as to when you submitted the affidavit  
6 in support of that serach warrant (showing  
7 document to witness)?

8 A Yes. It says August 31, 1988 .

9 Q And that was two days after the taped interview  
10 with Mr. Drumgold. Correct?

11 A Yes, sir.

12 Q That was that 1:30 in the afternoon interview.  
13 Correct?

14 A Yes, sir.

15 Q And, sir, you were in the courtroom, were you not,  
16 in Judge Martin's courtroom, late in the day on  
17 August 29, 1988, after Mr. Drumgold was brought  
18 back to court?

19 A About what time, sir?

20 Q Mr. Drumgold was interrogated at approximately  
21 1:30 on August 29th. Correct?

22 A Yes, sir.

23 Q And after that interrogation he was then brought to  
24 have more pictures andprints taken.  
25 Correct?

1 A Yes, sir.

2 Q And he was then returned to the courtroom?

3 A Yes, sir.

4 Q Did you find yourself in the courtroom when he was  
5 brought back there?

6 A I believe I was in the courtroom at that time.

7 Q And you were at that time, sir, that Judge  
8 Martin was rather upset that he had been  
9 interrogated, were you not?

10 A I became aware of that. Yes, sir.

11 Q At that time at least?

12 A At that time. Yes, sir.

13 Q And that was on August 29th, 1988?

14 A Yes, sir.

15 Q And you -- at least as of late in the day on August  
16 29th, 1988 you were aware of the fact that Judge  
17 Martin did not want to have Mr. Drumgold interro-  
18 gated that day?

19 A The first time I became aware of it was back at  
20 the courtroom, after the----

21 Q On August 29th?

22 A On August 29th, after the interrogation.

23 Q Late in the day on August 29th?

24 A Yes, sir.

25 Q And the only reference, or written reference you

I-88

1 made to any discussion with Mr. Drumgold on the  
2 morning of the 29th occurred in your affidavit  
3 submitted on August 31st?

4 A Yes, sir.

5 MR. RAPPAPORT: I have no further  
6 questions of the officer.

7 Cross-Examination

8 BY MR. BEAUCHESNE:

9 Q Now, Officer, I think you stated that when you  
10 came to the Roxbury Court at some time you  
11 learned that the Defendant Drumgold was in  
12 court that day?

13 A Yes, sir.

14 Q Is it -- was he in there under the name Drumgold  
15 or some other name?

16 A I was informed that he was in there under the  
17 name of Royston.

18 Q And, in fact, sir, had he been arrested under the  
19 name of David Royston?

20 A Yes, sir.

21 Q And you have seen a Boston House Police incident  
22 report and a booking sheet, I believe a Boston  
23 Police Department booking sheet?

24 A Yes, sir.

25 ,

I-89

1 Q And I show you what appears to be a copy of  
2 them (showing documents to witness), and ask  
3 if that's the incident report and the booking  
4 sheet that he was in there under?

5 A Yes, sir. This is dated the day before, on  
6 August 28th, 1988, which is what he was  
7 arrested for.

8 Q And in fact there's his signature there of -- or  
9 a signature purportedly by the person who was  
10 arrested, David Royston?

11 A Yes, sir.

12 (Document shown to counsel.)

13 MR. BEAUCHESNE: Your Honor, for the  
14 purposes of this hearing only, I'd offer a copy of  
15 the incident report and arrest sheet.

16 THE COURT: All right.

17 It may be marked Exhibit 6.

18 (Document was marked Exhibit  
19 No. 6, and was received in  
20 evidence.)

21 BY MR. BEAUCHESNE:

22 Q I think, sir, you told us that -- strike that.  
23 At the time that you went to the courtroom,  
24 the so-called First Session in the Roxbury  
25 District Court, you went there for what

I-90

1                   purpose, sir?

2       A   To look at the Defendant.

3       Q   And prior to that you hadn't seen this Defendant  
4                   that day?

5       A   No, sir.

6       Q   And in fact he was there under another name, but  
7                   somebody thought that he was in fact the Defendant  
8                   Drumgold?

9       A   Yes, sir.

10      Q   And at some time you told the Court that you went  
11                  and you talked to him in the dock?

12      A   In the holding area, the cell area of the court-  
13                  house.

14      Q   And when you talked to him you say -- before you  
15                  talked to him what did you say to him with regard  
16                  to his rights, if anything?

17      A   I read him his rights and informed him why I  
18                  was there.

19      Q   Do you have -- I think you told us you read him  
20                  his rights off a plastic card?

21      A   Yes, sir.

22      Q   Do you have that card with you today?

23      A   Yes, sir.

24      Q   Same card?

25      A   Yes, sir.

I-91

1 Q Would you produce it, please?

2 A (Pause.)

3 Q I'd ask you to read into the record those rights  
4 that you read to the Defendant Drumgold before you  
5 spoke to him in the dock that morning?

6 A It's a Miranda warning. And it states:

7 "Before we ask you any questions it is my duty  
8 to advise you of your rights. You have a  
9 right to remain silent. If you choose to  
10 speak, anything you say may be used against  
11 you in a court of law or other proceedings.  
12 You have the right to counsel with a lawyer before  
13 answering any questions, and you may have him  
14 present with you during questioning. If you  
15 cannot afford a lawyer, and you want one, a lawyer  
16 will be provided by the Commonwealth without  
17 any cost to you.

18 You may also waive that right to counsel and your  
19 right to remain silent, and you may answer any  
20 questions or make any statement you wish.

21 If you decide to answer questions you may stop at  
22 any time to consult with a lawyer."

23 Q And after you read him that card, did he indicate  
24 he understood it?

25 A Yes, sir.

I-92

1 Q What did he say with regard to his understanding?  
2 A He said that he understood it.  
3 Q Did you have a conversation with him?  
4 A Yes, sir.  
5 Q Would you tell us what you said to him and what  
6 he said to you?  
7 A Again, I informed him why I was there, seeking  
8 an arrest warrant for his arrest. And he made  
9 a statement to me roughly that he was in the area  
10 some time that evening, and that he had left the  
11 area and went to Grove Hall after the incident.  
12 He had seen the incident. He had left the area.  
13 He was in company of other people, and went to  
14 the Grove Hall area and had something to eat.  
15 Q Did he tell you whose company he was in?  
16 A Yes, sir.  
17 Q Whose company did he say he was in?  
18 A May I refresh my memory?  
19 Q Yes, you may.  
20 A (Pause.)  
21 He told me he was in the company of Terrance  
22 Taylor, Antonio Anthony, and a person only known  
23 to him as Paul.  
24 Q And where did he say he'd gone?  
25 A He had said he went -- he said he observed the

I-93

1                   crowd standing around the girl that had been shot  
2                   in the head. He informed me that he never left  
3                   the motor vehicle; and he left the area, and went  
4                   to Grove Hall, and had something to eat.

5                   Q     And is that, in sum and substance, the entire  
6                   statement that he gave to you concerning his  
7                   activities on the night in question?

8                   A     Yes, sir.

9                   Q     And now with regard to the statement that was  
10                  taken from him and taped in the afternoon----

11                  A     Yes, sir.

12                  Q     I believe you testified that you were not present  
13                  in the courtroom when Detective Murphy and  
14                  Superintendent Celester addressed the Court?

15                  A     Yes, sir.

16                  Q     You were not there?

17                  A     No, sir.

18                  Q     And at some time you came into the company of  
19                  the Defendant Drumgold?

20                  A     Yes, sir.

21                  Q     Now, at any time that day were you told of any  
22                  judicial order concerning interrogating or not  
23                  interrogating him?

24                  A     No; sir.

25                  Q     Were you present when this Defendant was arraigned

I-94

1           in court on this case?

2       A   Yes, sir.

3       Q   And what time was that?

4       A   It was some time in the afternoon, after we inter-  
5           viewed him -- 3:00 o'clock, 3:30. I'm not really  
6           sure. It was later on, after our interview.

7       Q   This is after your interview?

8       A   Yes, sir.

9       Q   And prior to your interview had you seen a complaint  
10          in this case?

11      A   Yes, sir.

12      Q   Had you actually been given a copy of or seen the  
13          original complaint in this case, as issued by the  
14          Court?

15      A   No, sir.

16      Q   So when you're talking about a complaint, you  
17          applied for a complaint?

18      A   Yes, sir.

19      Q   And what time do you say you applied, physically,  
20          for that complaint?

21      A   I would have physically brought the complaint down  
22          as soon as I could, which is after I brought it  
23          to Canavan and had him initial it.

24      Q   That's the application for a complaint?

25      A   The application. Yes, sir.

I-95

1 Q The actual court document and/or warrant -- did  
2 you see that at any time that day?

3 A I'm not sure if it was brought forward with his  
4 papers. I don't believe it was given to me.  
5 I believe it was brought up and put with his  
6 papers.

7 Q I don't know if I understood you. Did you say:  
8 "I don't believe it was given to me."?

9 A Yes.

10 Q So, to the best of your knowledge did you ever  
11 have physical custody of the actual court  
12 complaint that day?

13 A The actual court complaint -- no, sir.

14 THE COURT: He wouldn't have had as a  
15 matter of law. Right?

16 MR. BEAUCHESNE: Yes, your Honor. That's  
17 the point. I believe earlier on his direct testimony  
18 there was some talk about him having a complaint.

19 THE COURT: He might have had a copy,  
20 but he certainly wouldn't have had the complaint.

21 BY MR. BEAUCHESNE:

22 Q How about a copy of the complaint on that day --  
23 the actual complaint now, not the application?

24 A I believe we would have copied the complaint, at  
25 some point in time got a copy of the complaint.

I-96

1 Q You say you believe it. Now, do you have a memory  
2 of actually having physical possession of that  
3 complaint?

4 A No, sir.

5 Q And with regard to the warrant, do you have a  
6 memory of actually having physical possession of  
7 a warrant in this case?

8 A No, sir.

9 Q And in fact the Defendant was arraigned in the  
10 afternoon on the actual complaint, after your  
11 interrogation?

12 A Yes, sir.

13 MR. BEAUCHESNE: Just one moment, your  
14 Honor.

15 THE COURT: Yes.

16 (Pause.)

17 MR. BEAUCHESNE: I have nothing further.

18 Redirect Examination

19 BY MR. RAPPAPORT:

20 Q Sir, did you not state in your police report,  
21 prepared back on -- well, first of all, the  
22 events of August 29, 1988 were fresher in  
23 your mind on August 29, 1988 than they are  
24 today?

25 A Yes, sir.

I-97

1 Q Did you not state in your report, which was  
2 prepared on August 29, 1988, that at about  
3 10:00 a.m. you arrested Mr. Drumgold on Warrant  
4 8802CR8486, issued by the Roxbury District  
5 Court?

6 A Yes, sir.

7 Q And that was the murder warrant. Correct?

8 A Yes, sir.

9 Q Now today you say you don't remember whether or  
10 not you actually had a warrant or a copy of a  
11 complaint in your possession.

12 Right?

13 A (No response.)

14 Q Today you don't have a memory. Is that correct?

15 A I'm sure I had to sign it at some point in time.

16 Q Sir, back when the events of that day were fresh  
17 in your mind you said that you had arrested him  
18 at 10:00 pursuant to a warrant.

19 Correct?

20 A Yes, sir.

21 Q Issued by the Roxbury Court?

22 A Yes, sir.

23 Q On that complaint number. Correct?

24 A Yes, sir.

25 Q And that's the murder complaint in this case?

I-98

1 A Yes, sir.

2 Q Now, you at some point took custody of Mr.  
3 Drumgold's body, and physically removed him  
4 from the courthouse?

5 A Yes, sir.

6 Q What authority did you have to remove him from  
7 the courthouse?

8 A It would have been the warrant, sir.

9 Q Now, you have testified that you specifically  
10 were not aware of the discussion which was had  
11 between Judge Martin, and Mr. Celester, and  
12 Mr. Murphy.

13 Correct?

14 A Yes, sir.

15 Q Wasn't Mr. Murphy present, though, during your  
16 interrogation of Mr. Drumgold?

17 A Yes, sir.

18 Q He was in the courtroom with Mr. Celester. Right?

19 A I was not in the courtroom at that time.

20 Q But Mr. Murphy was certainly present during your  
21 interrogation of Mr. Drumgold. Correct?

22 A Yes, sir.

23 Q Now, Mr. Beauchesne had asked you what had Mr.  
24 Drumgold stated to you at 10:00 -- during the  
25 morning of August 29th.

1           Do you remember he asked you that question?

2       A   Yes, sir.

3       Q   And you asked him could you refresh your recollec-

4           tion?

5       A   Yes, sir.

6       Q   And you proceeded to look at a document?

7       A   Yes, sir.

8       Q   Is the document you just looked at the affidavit

9           which you prepared on August 31st?

10      A   Yes, sir.

11      Q   Again, two days afterwards. Correct?

12      A   Yes.

13      Q   At least two days after the statement that you

14           say was made by Mr. Drumgold. Correct?

15      A   Yes, sir.

16      Q   And two days after you learned, during the after-

17           noon of the 29th, that you had interrogated Mr.

18           Drumgold against the wishes of the Court.

19           Right?

20      A   I had learned that -- I had learned that there

21           was a problem in the afternoon. Yes, sir.

22      Q   Well, you were in court in the afternoon when

23           Judge Martin stated in open court that: I had

24           only let this man go to the police for purposes

25           of identification; and I specifically said, "He's

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1                   not to be interrogated."

2                   You were in the courtroom, weren't you, when he said  
3                   that?

4                   A    I don't recall if those are his words. No, sir.  
5                   I was in the courtroom.

6                   Q    And you understood that to be the gist of what he  
7                   was saying. Correct?

8                   A    Somewhat the gist. Yes, sir.

9                   Q    Now, I would imagine, sir -- and correct me if  
10                  I'm wrong -- that any statement that Mr. Drumgold  
11                  would have given you on the 29th, pertaining to  
12                  his activities on the night of the Tiffany Moore  
13                  murder would have been pretty important.

14                  Correct?

15                  A    Yes, sir.

16                  Q    In fact, when you interrogated him at Area B in  
17                  the afternoon you had a tape recorder going.  
18                  Correct?

19                  A    Yes, sir.

20                  Q    And you very carefully, as best you could, had  
21                  him sign a waiver of rights form. Correct?

22                  A    Yes, sir.

23                  Q    When you spoke to him in the morning you didn't  
24                  know that he was going to give you a statement  
25                  in the afternoon.

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1 Right?

2 A No, sir.

3 Q Did you take notes of that statement that he made  
4 in the morning?

5 A No, sir.

6 Q And you certainly didn't record it?

7 A No, sir.

8 Q And you didn't have him write anything out?

9 A No, sir.

10 Q And you knew at that time that any statement he  
11 gave you would be very important. Correct?

12 A Yes, sir.

13 Q In fact when Mr. Beauchesne just asked you what  
14 was that statement, you didn't even remember  
15 without looking at something you had prepared  
16 two days after this whole turn of events.

17 Correct?

18 A That's correct.

19 MR. RAPPAPORT: No further questions.

20 THE COURT: Was the search warrant and  
21 affidavit ever introduced as an exhibit?

22 MR. RAPPAPORT: In this particular matter?

23 THE COURT: Yes.

24 MR. RAPPAPORT: It hasn't been, Judge.

25 THE COURT: Are you going to offer it?